IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7963 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

STATE OF GUJARAT

Appearance:

MS. ACHARYA, AGP, for Petitioner

NOTICE SERVED for Respondent No. 2, 3, 4, 5, 6, 7, 8, 9,10

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 01/09/2000

ORAL JUDGEMENT

1. The State of Gujarat thorough Executive Engineer, Panam Yojana Vibhag, Godhra, District Panchmahals Petitioner has filed this petition challenging the order dated 31.1.1991 passed by the Labour Court, Godhra,

wherein the Labour Court was pleased to reject Miscellaneous Civil Application No. 15 of 1990 in Recovery Application No. 1115/86 to 1124/86 filed by the State of Gujarat.

2. The facts giving rise to this petition are as under:-

2.1 According to the petitioner, respondent No. 1 Mohanbhai Udabhai Baraiya and others were daily wagers and they were employed as daily rated labourers on the canal. The petitioner has produced statement showing the days on which the respondents worked as daily wagers at Annexure-A before this court. It was stated by the petitioner that the respondents were present on work as labourers on the canal from 1977 to 1982 and thereafter they did not work.

2.2 It appears from the record that the respondents have raised an industrial dispute and a reference No. (LCV) 380/81 was filed before the Labour Court, Baroda. In that case on 4.4.1984 the Labour Court directed that the respondents should be reinstated in service. However, the Labour Court did not pass any award regarding past emoluments. Learned A.G.P. Ms. Acharya appearing on behalf of the State Government stated that even before the award was passed the Government was not heard. It appears that thereafter the labourers filed Recovery Applications being Recovery Application Nos. 1115/86 to 1124/86 before the Labour Court claiming salary from 1.4.1984 to 31.3.1986.

2.2 In the Recovery Application, it appears that, the Labour Court, Baroda, issued several notices to the Executive Engineer, Panam Yojana Vibhag, Godhra but nobody appeared. In view of the same, the Labour Court, Baroda, directed that the respondent employees are entitled to salary from 1.4.1984 to 31.3.1986 and directed to pay the said emoluments within 30 days by the Executive Engineer, Panam Yojana Vibhag, Godhra.

2.3 It appears that the Executive Engineer, Panam Yojana Vibhag, Godhra, filed an application on 23.8.1989 before the Labour Court, Baroda and stated that they did not receive notices of earlier recovery application and they for the first time came to know about the order on 22.6.1989. It appears that the original canal work was over and thereafter the office was closed. Therefore, it appears that the notice issued by the Labour Court in recovery application was not served to the Government. The learned A.G.P. Ms. Acharya has also produced

rojnama of the Labour Court, Godhra and from the rojnama also it appears that the notices were not served to the respondents. The application as well as rojnama has been taken on record in this behalf.

2.4 The learned A.G.P. has contended that as the original award passed by the Labour Court is without hearing the Government and even the recovery application was also decided without hearing the Government and when the Miscellaneous Civil Application was filed by the Government pointing out all these facts, the Labour Court has rejected the said application only on the ground that in the recovery application the respondent was Executive Engineer, Panam Canal Vibhag, Godhra and therefore the Miscellaneous Civil Application must be made by the Executive Engineer, Panam Canal Vibhag, Godhra. The present application has been filed by the Executive Engineer, Panam Yojana Vibhag, Godhra and therefore they have no right to make such application and therefore the award of the Tribunal dated dated 24.2.1984 as well as the award passed in recovery application dated 19.5.1989 cannot be set aside. Ms. Acharya, learned A.G.P. submitted that both the orders i.e. award dated 24.2.1984 as well as recovery application dated 19.5.1989 were passed in violation of rule of natural justice and therefore the same are bad in law. The learned A.G.P. relied on the judgement of the Supreme Court in the case A.K. KRAIPAK VS. UNION OF INDIA reported in AIR 1970 SC 150 as well as judgement of the Supreme Court in the case of MANEKA GANDHI VS. UNION OF INDIA reported in AIR 1978 SC 597 and has stated that any order in violation of rule of natural justice is illegal and liable to be set aside. She further submitted that the Labour Court has taken a very technical view of the matter and the Labour Court ought to have taken note of the fact that the original Executive Engineer's office was closed and therefore the Executive Engineer, Panam Yojana Vibhag has filed the applications and therefore also the order of the Labour Court is illegal and bad in law. In fact, on merits of the matter she also stated that none of the workers have completed 240 days and therefore the Labour Court ought to have considered that the respondents were not entitled to any emoluments in this behalf from 1.4.1984 to 31.3.1986.

3. When the matter was admitted on 19.11.1991 the court granted interim relief and ultimately also the court has passed the following order:-

"Notice returnable on 9.12.1991. Ad-interim stay of award so far as Executive Engineer, Panam

Yojana Vibhag is concerned, till 10.12.1991."

4. In my view therefore the order of the recovery application dated 19.5.1989 as well as 31.1.1991 is illegal and liable to be set aside and quashed because they were passed in violation of rules of natural justice as Government was not heard in this behalf when the order of the recovery application dated 19.5.1997. Even after when the Government filed application dated 23.8.1989 wherein the Government was not heard on technical ground and the Labour Court rejected the said application and that the order is also bad in law because the Labour Court has not considered the relevant facts in this behalf. On merit of the matter also it was stated that the employees have worked as casual labourers and they have even not completed 240 days and therefore the order dated 24.2.1984 passed by the Labour Court awarding reinstatement is also illegal and bad in law. The petition is therefore allowed. All the orders dated 24.2.1984, 19.5.1984 and order dated 31.1.1991 are quashed and set aside. Rule is made absolute with no order as to costs.

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